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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS MANUEL ZAVALA,

Defendant and Appellant.

2d Crim. No. B171681
(Super. Ct. No. 2003003220)
(Ventura County)

Jesus Manuel Zavala appeals from the judgment entered after conviction by a jury of vandalizing property by defacing it with graffiti. (Pen. Code, § 594, subds. (a)(1), (b)(2)(A).)¹ Appellant was not the actual writer of the graffiti. The conviction was based on the theory that he had aided and abetted the vandalism.

The jury found true an allegation that appellant had committed the offense for the benefit of Colonia Chiques, a criminal street gang, with the specific intent to promote criminal conduct by gang members. (§ 186.22, subd. (d).) The trial court suspended the imposition of sentence and placed appellant on probation. One of the conditions of probation was that he serve 180 days in county jail.

¹ All statutory references are to this code unless otherwise stated.

Appellant contends that the evidence is insufficient to support his conviction. We affirm.

Facts

During the afternoon, Jeffrey Larson saw four people behind a Circle K store in the City of Ventura. One person was wearing a white or a white and blue football jersey with "numbers on it, like, 22 or something."² The four people were standing two to five feet away from each other. Larson was approximately 15 feet away from them.

One of the four was writing on a wall with a marker. A person behind the writer was "just kind of looking over the shoulder." The other two "were just kind of looking left to right and back towards the writing."

Larson went home to get his cellular telephone. He returned to the Circle K, but the four people were no longer there. They had walked toward an Arby's restaurant that shares the same parking lot with Circle K. They "were just hanging out around the parking lot at Arby's." Larson telephoned 911 to report the vandalism.

Officer Alex Turcotte responded to the 911 call and parked by Arby's. He saw appellant enter the restaurant. Appellant was wearing a white football jersey with the number 28 on it. Turcotte "remember[ed] blue being on the jersey."

Turcotte walked inside Arby's but did not see appellant there. He left Arby's, walked around the outside of the restaurant, and saw appellant with three other people sitting near a trash can. Appellant and another person, later identified as Gabriel Perez, walked into Arby's. Turcotte followed them inside. They left the restaurant, and Turcotte detained them. Turcotte directed Officer Dan Swanson to contact the other two people, who were later identified as Jose Pineda and Juan Equihua. All four people are members of Colonia Chiques, a Hispanic criminal street gang with over a thousand members.

² Larson originally testified that the football jersey was "kind of a white and blue." He later testified: "It looked like a white jersey . . . with dark lettering"

The police drove Larson to where the four people were being detained. Larson identified them as the same four he had seen standing behind Circle K when the vandalism was occurring. His identification was based on their "general appearance" and clothing. He had not seen their faces when they were standing behind Circle K. Larson was unable to identify the person who had written graffiti on the wall.

The graffiti was written in three lines. The first line contained the following letters and numbers: "COX3CH." Officer Erik Mora, an expert on Hispanic criminal street gangs, testified that "CO" stands for Colonia, "X3" stands for the number 13, and "CH" stands for Chiques. The number 13 refers to criminal street gangs in southern California.

The second line of the graffiti contained the word "Gumby" followed by "Louie." The third line contained the word "Outkast" followed by "L Moose." "Gumby" is Perez's gang moniker. Mora opined that "Louie" stood for "Little Louie," Pineda's gang moniker, and "L Moose" stood for "Little Moose," the moniker of Equihua. Mora had never heard of the moniker "Outkast." Appellant's moniker is "Horse."

Because Perez's moniker appeared first in the list of monikers on the wall, Officer Mora opined that Perez had written the graffiti. Mora explained that the writer of gang graffiti will normally put his moniker first, followed by the monikers of the persons he associates with and the monikers of "lookouts" who are present while the graffiti is being written.

Standard of Review

"[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence - that is, evidence that is reasonable, credible and of solid value - from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.) We must " 'presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " [Citation.]" (*People v. Rayford* (1994) 9 Cal.4th 1, 23.) "[I]t is not within our province to reweigh the evidence

or redetermine issues of credibility. [Citation.]" (*People v. Martinez* (2003) 113 Cal.App.4th 400, 412.) "Reversal . . . is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Substantial Evidence Supports Appellant's Conviction

Appellant argues that substantial evidence does not support his conviction. The argument is premised on three contentions. First, the evidence is insufficient to show that he was present while Perez was writing the graffiti. We disagree. Outside Arby's, Officer Turcotte saw appellant in the company of Perez and two other persons - Pineda and Equihua - whose monikers were included in the graffiti. All four people were members of Colonia Chiques. Appellant's companionship with the others near the scene of the vandalism shortly after it had been committed, as well as the gang association, made it likely that he was the fourth person present when the graffiti was being written.

The evidence shows that appellant tried to avoid contact with Officer Turcotte. When Turcotte parked by Arby's, appellant entered the restaurant. Turcotte followed appellant inside, but was unable to find him. Turcotte walked around the outside of Arby's and saw appellant sitting near a trash can. Appellant entered Arby's again and Turcotte followed him inside. Appellant left the restaurant and Turcotte detained him. "[F]leeing at the first sight of a uniformed police officer" suggests consciousness of guilt. (*People v. Souza* (1994) 9 Cal.4th 224, 235.)

Based on their general appearance and clothing, Larson identified appellant, Perez, Pineda, and Equihua as the four persons he had seen standing behind the Circle K when the graffiti was being written. Appellant's clothing was distinctive. He was wearing a white football jersey bearing the number 28. The jersey had some blue coloring. Larson testified that one of the four persons behind the Circle K was wearing a white or white and blue football jersey with "numbers on it, like 22 or something."

Appellant emphasizes that appellant's gang moniker, "Horse," was not included in the graffiti. Appellant maintains that the absence of his moniker "strongly suggests that

[he] was not present at the Circle K." But the jury could have reasonably concluded that appellant was also known by the moniker of "Outkast," which had been written on the wall. Officer Mora testified that he did not know who "Outkast" was and that "some gang members are known by different monikers to different gang members."

Appellant's second contention is that, even if the evidence is sufficient to show he was present, it is insufficient to show he aided and abetted the writing of gang graffiti by Perez. "[A]n aider and abettor is a person who, 'acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.' [Citation.]" (*People v. Prettyman* (1996) 14 Cal.4th 248, 259.) Appellant argues: "[T]here is no evidence that he intended to encourage the vandalism, or acted in such a way as to aid[,] promote, encourage or instigate the vandalism."

The jury could have reasonably found that appellant had intended to encourage or facilitate the writing of gang graffiti by Perez and that his acts had promoted the commission of the crime. It was reasonable to infer that appellant, Pineda, and Equihua had been acting as lookouts for Perez. Larson testified that the four persons behind the Circle K were all standing two to five feet away from each other. A person behind the writer was "just kind of looking over the shoulder." The two other people "were just kind of looking left to right and back towards the writing." Officer Mora testified that, when a gang member writes graffiti in a public place, other members of his gang are present "to back him up" in case a rival gang intervenes. "And they are also lookouts to look for police, witnesses, or persons walking up on them while they are committing this crime."

It was also reasonable to infer that appellant, Pineda, and Equihua were present to sanction and validate the writing of gang graffiti by Perez. Officer Mora explained that, by writing the graffiti, Perez was "doing work for the gang and trying to get the respect of the gang members." The gang members who witnessed Perez's writing of the graffiti "are going to validate the fact that he's done this for them and for the gang."

Appellant's third contention is that the evidence is insufficient to show that he committed the offense for the benefit of Colonia Chiques with the specific intent to promote criminal conduct by gang members. (§ 186.22, subd. (d).) (AOB 10)

Appellant maintains that "[t]here is scant evidence that [he] was a member of the Colonia Chiques" But Officer Mora testified that appellant had "admitted to being a Colonia Chiques gang member in the past[.]" No evidence was presented that, since his admission, appellant had withdrawn from the gang. His presence with other gang members during the writing of the graffiti indicates that he was still actively involved in the gang.

The jury reasonably concluded that appellant had committed the offense for the benefit of Colonia Chiques with the specific intent of promoting criminal conduct by gang members. Mora testified that this type of graffiti by gang members is intended to be a warning and an act of disrespect, "a way to assert their identity and to get their gang name out there." By the graffiti they communicate to other gangs and to the community that "this gang exists." acts of vandalism, such as graffiti" Mora opined that the graffiti was written for the benefit of Colonia Chiques.

Accordingly, substantial evidence supports appellant's conviction.

Disposition

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Tari L. Cody, Judge
Superior Court County of Ventura

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